

**338 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
 CHANDIGARH**

**CRA No. S-227-SB of 2004 (O&M)
Decided on : 04.02.2015**

Suresh Kumar

...Appellant

versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ramender Chauhan, Advocate,
 for the appellant.

 Mr. P.P. Chahar, DAG, Haryana.

K. C. PURI, J. (ORAL)

Challenge in this appeal is to the judgment of conviction dated 18.12.2003 and order of sentence dated 19.12.2003, passed by Ms. Sarita Gupta, Additional Sessions Judge (Fast Track Court), Bhiwani, vide which the present appellant was convicted under Section 25 of Arms Act and sentence to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo simple imprisonment for two months.

Briefly stated that the present appellant alongwith other co-accused were sent to stand trial under Sections 399, 402 of IPC and 25 of the Arms Act, Police Station Civil Lines Bhiwani.

The case of the prosecution in brief is that on 01.02.2003, a rukka was received in Police Station Civil Lines, Bhiwani to the effect that Sher Singh, Sub Inspector alongwith other police officials were present at

Rohtak Chowk, Bhiwani for the purpose of investigation in official jeep, which was being driven by EHC Dharambir. A secret information was received that five youths armed with deadly weapons were hatching a conspiracy in a room on the northern side of new bus stand to commit dacoity at a petrol pump. Black colour motorcycle was parked outside the room and if raid was conducted, they could be apprehended. On receiving the information, SHO, Sher Singh informed the police officials about the secret information and prepared raiding parties. SHO-Sher Singh, EHC-Hari Chand and Constables-Surender and Raj Singh were in first raiding party, SI-Atma Ram alongwith EHC-Raj Singh and Constables-Dilbag and Jeet Ram were in second raiding party, ASI-Shree Bhagwan alongwith EHC-Suresh and Constables-Bhim Singh and Suresh Kumar were in third raiding party, HC-Balbir Singh, HC-Satbir Singh and HC-Sahab Singh were in fourth raiding party and accordingly raid was conducted. Khukhari is stated to be recovered from the appellant whereas other weapons were recovered from other accused.

On presentation of challan, copies of same were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C.

Thereafter, charge under Sections 399 and 402 of IPC and 25 of the Arms Act was framed against the accused, to which the accused pleaded not guilty and claimed trial.

In order to bring home the guilt of accused, prosecution examined HC-Jai Pal Singh as PW-1, ASI-Shree Bhagwan as PW-2, Inspector-Ram Avtar as PW-3, Bhisham Chander, Reader to District Magistrate as PW-4, SI-Sher Singh as PW-5, HC-Om Parkash as PW-6, SI-Atma Ram as PW-7, EHC-Pardeep Kumar as PW-8 and ASI-Satyavan as PW-9 and closed the evidence, after tendering certain documents.

The accused were examined under Section 313 Cr.P.C,

wherein all the incriminating evidence was put to them, to which they denied and pleaded innocence and false implication.

The accused were called upon to lead defence evidence and they have not chosen to lead any evidence in defence, and thereafter, closed the evidence.

The learned trial Court, after appraisal of the evidence, acquitted the accused under Sections 399 and 402 of IPC. However, Jai Singh, Ravinder and the present appellant-Suresh Kumar were convicted under Section 25 of the Arms Act and sentenced to undergo as narrated above.

Feeling dissatisfied with the above said judgment of conviction and order of sentence dated 18.12.2003 and 19.12.2003 respectively, passed by Ms. Sarita Gupta, Additional Sessions Judge (Fast Track Court), Bhiwani, the appellant has filed the present appeal.

Learned counsel for the appellant has not challenged the conviction, but has submitted that only Khukhari was alleged to be recovered from the appellant. The appellant has already undergone incarceration for a period of one month and eighteen days and still is in custody since 09.10.2014 and in this manner, he has undergone incarceration for a period of five months and fifteen days.

Learned counsel for the appellant has submitted that the Hon'ble Apex Court in authority **Nasir Versus State of Uttar Pradesh 2010 AIR (SC) 1926**, reduced the sentence to six months in respect of offence under Section 25 of the Arms Act. Learned counsel for the appellant has also relied upon the authorities **Sukhdev Singh Versus State of Punjab, 2005 (4) RCR (Criminal) 694, Major Singh Versus State of Haryana 2013 (1) RCR (Criminal) 141, Kirpal Singh Versus State of Punjab, 2009 (1) AICLR 243, Bir Singh Versus State of Haryana, 2014 (1) Law Herald 640**

and Jagdeep Singh @ Neetu Versus State of Punjab 2013 (2) Law Herald 1849.

The prayer has been opposed by the State counsel.

I have carefully considered the submissions made by both the parties and have gone through the records of case.

Although, learned counsel for the appellant has not challenged the conviction but since this is the first appeal, myself gone through the record of the case. The recovery of Khukhari stands proved beyond reasonable doubt and as such, conviction of the appellant under Section 25 of the Arms Act stands affirmed.

Now, reverting to the quantum of sentence. The Hon'ble Apex Court in authority **Nasir's case (supra)**, reduced the sentence to six months against the substantive sentence of five years under Sections 399, 402 and 25 (1) (a) of the Arms Act. This Court also in authorities **Sukhdev Singh's case (supra)**, **Major Singh's case (supra)**, **Kirpal Singh's case (supra)**, **Bir Singh's case (supra)** and **Jagdeep Singh @ Neetu's case (supra)**, has reduced the sentence in appropriate cases.

So, keeping in view the ratio of the Hon'ble Apex Court authority and ratio of this Court authorities, the sentence of the appellant stands reduced to the period already undergone, which is already five months and fifteen days as discussed above. The petitioner is stated to be in custody. He be released forthwith, if not required in any other case.

Disposed of.

A copy of the order be conveyed to the concerned quarter for compliance.

February 04, 2015
dk kamra

(K.C. PURI)
JUDGE